

### **REMARKS**

The above-referenced application has been reviewed in light of the Office Action mailed May 17, 2004. By the present amendment, claims 1 and 6 have been canceled, claims 2, 5, 7, and 8 have been amended, and new claims 10-12 have been added. It is respectfully submitted that the claims pending in the application do not introduce new subject matter, are fully supported by the specification, and are patentable over the prior art. Prompt and favorable consideration of these claims is earnestly sought.

The Office Action rejected claims 2 and 5-9 under 35 U.S.C. § 102 (e) as being anticipated by U.S. Patent No. 5, 102,390 to Crittenden et al. (the '390 patent) or, in the alternative, under 35 U.S.C. § 103 (a) as obvious over the '390 patent in view of U.S. Patent No. 5,180,367 to Kontos et al. (the '367 patent). In the Office Action, the Examiner stated that the '390 patent discloses a device having a first tubular member having an open proximal end, a first inflatable member, a second tubular member having open proximal and distal ends defining a bore therethrough, and a second inflatable member. In addition, the Examiner stated that the '390 patent does not disclose the first tubular member having an open distal end, but stated that the '367 patent discloses a device having an inner tubular member with an open distal end and it would have been obvious to make the device of the '390 patent with the open distal end of the '367 patent.

As noted by the Official Action, the '390 patent is deficient in that it does not disclose the first tubular member having an open distal end, as required by amended claim 2. The Examiner

attempts to overcome this deficiency by combining the disclosure of the '367 patent with the disclosure of the '390 patent. According to the Examiner, it would have been obvious to make the device of the '390 patent with the open distal end of the '367 patent.

Further still, in the Office Action, the Examiner considered the slidable guide wire of the '367 patent to be the surgical instrument recited in claim 6. The '367 patent specifically discloses a guide wire that is typically 0.014 inches in diameter (Column 8, lines 11-13) while the '390 patent specifically discloses a guide wire that is preferably 0.008 inches in diameter.

The disclosure of the '390 patent, taken alone or in combination with the disclosure of the '367 patent, as suggested by the Office Action, does not anticipate or suggest an apparatus for separating layers of tissue including a first tubular member, a first inflatable member that has "an open proximal end and an open distal end defining a first aperture therethrough, the first aperture and the first bore being configured and dimensioned for slidably receiving a surgical instrument therethrough" as recited in amended claim 2. The '390 patent relates to an angioplasty device having a tubular member and a guide wire that extends therethrough. The distal end of the tubular member has a closed distal end since the guide wire is brazed or soldered in position (see Column 7, lines 22-23). The '367 patent discloses a tubular member having an open distal end so that it can slidably receive a guide wire. Both the '367 patent and the '390 patent specifically disclose an extremely miniscule device (i.e. the guide wire) that is not suitable for use as a surgical instrument in an apparatus for separating layers of tissue as recited in amended claim 2. Therefore, it is respectfully submitted amended claim 2 is not anticipated or suggested by the

'390 patent, taken alone or in combination with the '367 patent, and the rejection of the Office Action has been overcome. Since claims 5 and 7-9 depend from amended claim 2, it is respectfully submitted that the rejection of these claims has been overcome as well.

Claims 3 and 4 were rejected in the Office Action under 35 U.S.C. § 103 (a) as being unpatentable over the '390 patent in view of the '367 patent and further in view of U.S. Patent No. 4,981,478 to Evard et al (the '478 patent). The Office Action stated that the '390 patent does not disclose an inner member defining an annular space with the first tubular member. According to the Office Action, the '478 patent discloses a balloon with an inner tubular member and an outer tubular member having an annular space therebetween.

However, as discussed above, the '390 patent in combination with the '367 patent is deficient in that the combination does not anticipate or suggest an apparatus for separating layers of tissue including a first tubular member, a first inflatable member that has "an open proximal end and an open distal end defining a first aperture therethrough, the first aperture and the first bore being configured and dimensioned for slidably receiving a surgical instrument therethrough" as recited in amended claim 2. The addition of the '478 patent does not overcome this deficiency. Since claims 3 and 4 depend from amended claim 2, it is respectfully submitted that these claims are not suggested by the '390 patent in view of the '367 patent and further in view of the '478 patent and the rejection of the Office Action has been overcome.

New claims 10-12 depend directly from amended claim 2. As discussed hereinabove, the '390 patent, taken alone or in combination with the '367 patent and the '478 patent, does not

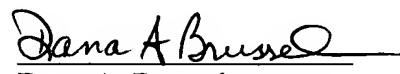
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disclose or suggest the device recited in amended claim 2. Therefore, it is respectfully submitted that new claims 10-12 are patentable over the art of record.

In view of the foregoing amendments and remarks, it is respectfully submitted that all claims pending in the application, namely claims 2-5 and 7-12, are in condition for allowance. Should the Examiner desire a telephonic interview to resolve any outstanding matters, he is sincerely invited to contact the undersigned at (631) 501-5713.

Respectfully submitted,

Carter, DeLuca, Farrell & Schmidt, LLP  
445 Broad Hollow Road - Suite 225  
Melville, New York 11747  
Tel.: (631) 501-5713  
Fax: (631) 501-3526

  
Dana A. Brussel  
Reg. No. 45,717  
Attorney for Applicants

**Send correspondence to:**  
Chief Patent Counsel  
Tyco Healthcare Group  
150 Glover Avenue  
Norwalk, CT 06856